

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

CHRISTOPHER JAMES ROGERS

PLAINTIFF

v.

No. 4:09CV00037-MPM-DAS

HUMPHREYS COUNTY, MISSISSIPPI, ET AL.

DEFENDANTS

REPORT AND RECOMMENDATIONS

By Order (# 14) dated August 27, 2009, the court granted the plaintiff's third motion for additional time in which to serve Defendant Sheriff Wayne Holloway. The plaintiff requested and was allowed only seven (7) additional days in which to effect service. The court warned the plaintiff that further extensions would not likely be granted. On November 6, there having been no entry of a return of service for the defendant, the court issued an Order (# 17) requiring the plaintiff to show cause why Defendant Holloway should not be dismissed pursuant to FED.R.CIV.P. 4(m) for the plaintiff's failure to effect service of process. In his response, the plaintiff essentially restated the grounds asserted in support of his August motion for additional time, i.e., that a private investigator had attempted to serve the defendant and that the defendant had been evading service. However, the plaintiff cited no specific attempts to effect service during the over two month period between the date the last extension was granted and the date of the court's Show Cause Order. Because the plaintiff has failed to effect service of process upon Defendant Holloway within the 120 period required by FED.R.CIV.P 4(m) and has not shown good cause for failure to serve said defendant within the extended period specified by the court, it is recommended that Defendant Wayne Holloway be dismissed without prejudice pursuant to Rule 4(m).

The parties are referred to Local Rule 72.2(D) for the applicable procedure in the event any party desires to file objections to the findings and recommendations herein contained. The parties are warned that any such objections are required to be in writing and must be filed within ten days of this date. Failure to timely file written objections to the proposed findings, conclusions and recommendations contained in this report will bar an aggrieved party, except upon grounds of plain error, from attacking on appeal unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Respectfully submitted this 17th day of November, 2009.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE